Other arguments advanced by the plaintiffs may be mentioned briefly. They objected that the right to sue for specific performance does not arise unless and until performance of the contract has been requested and refused. No authority for this proposition was cited. It is a technical point to which the defendants suggested several technical answers. It is not necessary to discuss these here because, in my view, the point affects costs only.

The plaintiffs raised the question of limitation. This was debated on its merits and dropped. The position is that limitation was never actually pleaded and no formal application to amend was made. The point was considered and abandoned.

The plaintiffs also said that the rights of the parties, particularly with regard to the notice of 27th May, 1952, must be ascertained without reference to the Control of Rent Legislation. This proposition, in that broad and general form, is not supported by the authorities cited, but it is unnecessary to examine them because, even if a rule to that effect existed, it would not be infringed in this case. That legislation is not referred to or relied on for any point decided either now or in the judgment of 21st June. In my view both parties are equally actuated by considerations arising from that legislation and it would not be practicable, or right, for the Court to ignore its existence. I have, however, decided the questions at issue on much older laws and principles and leave the parties to work out the consequences for themselves.

Counsel for the plaintiffs remarked that there was no precedent for amending pleadings after the case had proceeded to trial and judgment had been reserved, and that the Court would not have gone so far had the case not involved a large building and a great number of children. The former point affects only costs. The latter point is completely misconceived. It is relatively rare for a large building to be the subject of a suit such as this. On the contrary it is remarkable how frequently very small properties are the subject of litigation, so lengthy and costly as to be out of all proportion to their apparent value. If a two roomed hut had been let to a young widow, herself still legally an infant, with a child, and a purchaser had sought to eject her, the case would have raised nearly all the same issues, and it would have received exactly the same measure of care. It is true that the Association, though legally a "person under disability," does not consist of persons who are infants in fact, and that is a point to be considered in the exercise of discretion. I would not assent to the proposition that such an association should be treated generally as an infant.

The gist of the case is this. The plaintiffs bought the property subject to the tenancy of the Association. They and their legal advisers continued for some months in the belief that the tenancy was legal and their only objection was to the difficulty in finding authorised representatives with whom to deal. Later they discovered the legal flaw and founded this action on it. There had been one or two delays in the payment of rent, but these were not so serious as to disqualify the Association for discretionary relief.

On the whole case I am clearly of opinion that the counterclaim succeeds in substance. I do not think that specific performance of a contract is the apt form but specific equitable relief to a similar effect can be given.

The defendants must, within one month, appoint trustees to hold a legal tenancy of the building on behalf of the Association.

For this purpose "trustees" mean at least two and not more than four real persons, or a trust corporation, nominated by the defendants with the consent of the plaintiffs or, failing agreement, by the Registrar.

The defendants must pay by 23rd December, rent up to the end of the year at $125 p.m. plus a deposit of $125, taking credit for the amount now in Court and for any existing deposit.

Subject to the foregoing, the plaintiffs must grant a legal tenancy to the trustees, from 1st January next, on the same terms and conditions as were expressed and implied as between the vendors and the Association.

I will hear argument as to costs.

Order accordingly.

[NOTE: After argument the Parties agreed that there should be no order as to costs.]

Solicitors: *Donaldson & Burkinshaw; Allen & Gledhill.*

S. RM. MEYAPPA CHETTIAR v. LIM LIAN KOO

[C. A. (Mathew C.J. (F.M.), Murray-Aynsley C.J. (S) and Knight J.) October 15, 1954]

[J. B. — Civil Appeal No. 31 of 1954]

Contracts (Malay States) Ordinance, 1950, s. 149 — Whether applicable in a case where the agent contracts in his personal capacity.

In this case one Palaniappa Chettiar, the attorney of Somasundaram Chettiar entered into an agreement with the respondent under which Palaniappa Chettiar handed over to the respondent, a certain piece of land in Batu Pahat, the property of his principal, in consideration of the sum of $7,000 and agreed "that upon the

return of normal conditions, the vendor shall obtain a special power of attorney from the said Somasundaram Chettiar now in India and execute a true and lawful transfer of the said land at the purchaser's own expenses." He further agreed that if he was unable to obtain the necessary power from his principal, the $7,000 was to be returned to the respondent. At the trial the learned Judge held that the agreement had been satisfied by Somasundaram Chettiar and he therefore dismissed a claim for recovery of possession of the land.

Held: the terms of the agreement showed that Palaniappa Chettiar was acting in his personal capacity and therefore the principle of ratification cannot apply to the agreement.

Case referred to:—

(1) *Wilson v. Tumman* (1843), 6 M. & C. 242.

COURT OF APPEAL. Appeal from the judgment of Storr J.

A. N. Mitra for the appellant.

S. Chelvasingam-MacIntyre (Suleiman Abdulrahman with him) for the respondent.

Mathew C.J. : — This litigation arose out of an agreement entered into on the 7th February, 1945 between one L. Palaniappa Chettiar the attorney of one S.R.M.M. Somasundaram Chettiar, and the respondent. Under this agreement, Palaniappa Chettiar handed over to the respondent a certain piece of land (in Batu Pahat) the property of his principal, in consideration of a sum of $7,000, and agreed (by clause 2 thereof) :—

"That upon return of normal conditions, the vendor shall obtain a special power of attorney from the said S.R.M.M. Somasundaram Chettiar now in India and execute a true and lawful transfer of the said land at the purchaser's own expenses."

If he was unable to obtain the necessary power from his principal, the $7,000 was to be returned to the respondent.

In the recital to the said agreement it was specifically mentioned that Palaniappa Chettiar had no power from his principal to effect the transfer of the land. A perusal of the agreement shows clearly that it was entered into by Palaniappa Chettiar in his personal capacity, and clause 2 of the agreement puts it beyond doubt. The word 'vendor' can only refer to Palaniappa Chettiar. Had he intended to bind his principal, the agreement would have been in a different form, and would have between 'Somasundaram Chettiar by his attorney Palaniappa Chettiar' and the respondent. In my view, the respondent was fully alive to the fact that if Palaniappa Chettiar failed to obtain the necessary power from his principal, he would lose the land and had only Palaniappa Chettiar to look to for the repayment of his $7,000.

I do not consider it necessary to examine in detail the reasons which led the learned trial judge to hold that the deceased Somasundaram Chettiar had ratified the agreement during his life time for, in my view, the principle of ratification cannot apply to this agreement. That principle only applies where the agent has professed to contract for his principal who afterwards ratifies. The doctrine is thus stated by Tindal C.J. in *Wilson v. Tumman*[1], at page 242 :—

"That an act done for another, by a person, not assuming to act for himself, but for such other person, though without any precedent authority whatever, becomes the act of the principal, if subsequently ratified by him, is the known and well-established rule of law. In that case the principal is bound by the act, whether it be for his detriment or his advantage, and whether it be founded on a tort or on a contract, to the same effect as by; and with all the consequences which follow from the same act done by his previous authority."

In this case, the agent never even professed to contract as agent for a principal without authority — *vide* section 149 Contracts (Malay States) Ordinance, 1950.

I would allow this appeal with costs here and below, and make an order that judgment be entered for the plaintiff-appellant in terms of the prayers contained in sub-paragraphs (a) and (d) of paragraph 10 in the plaint. The deposit in Court will be refunded to the appellant.

Murray-Aynsley C.J. (S.) and **Knight J.** concurred.

Appeal allowed.

Solicitors : *Mitra & Co.; Suleiman Abdulrahman & Co.*

SOON KOOI HUN v. R. CHINDAN; R. NARAYANAN (Petitioner)

[C. R. J. (Spenser Wilkinson J.) October 18, 1954]

[Penang — Civil Revision No. 3 of 1954]

Landlord and tenant — Control of Rent Ordinance, 1948, s. 14 — Protection to lawful sub-tenant — Procedure to be adopted by sub-tenant aggrieved by order for possession against tenant — Subordinate Courts Rules, 1950, O.27.

This matter arose out of proceedings for possession taken out by the plaintiff, the landlord of premises No. 7 Ayer Itam Road, Penang, against the tenant. At the trial the tenant stated that he had no sub-tenants and the learned Magistrate therefore made no declaration in his order as to whether or not the sub-tenants were bound thereby. Execution was issued in respect of the premises but when the bailiff came to take possession he found persons other than the tenant and his family in occupation. A notice was then issued by the bailiff calling upon the occupiers to quit the premises. Thereupon the petitioner, who claimed to be a lawful sub-tenant, applied to the High Court for revision. At the hearing it was contended on behalf of the plaintiff that the procedure adopted by the petitioner in applying for revision was wrong.

Held: the proper course for the petitioner to adopt would have been to apply for relief to the Magistrate's Court and the case should be remitted to the Magistrate's Court for the petitioner to be heard and for determination on the question whether or not the petitioner was a sub-tenant who is entitled to protection under the Control of Rent Ordinance.